

SAC AND FOX TRIBE OF MISSOURI, Appellant  v.  DEPUTY COMMISSIONER OF INDIAN AFFAIRS, Appellee	: Order Vacating Decision and : Remanding Case : : : Docket No. IBIA 91-121-A : : : February 25, 1992
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This is an appeal from a June 26, 1991, decision of the Deputy Commissioner of Indian Affairs, denying appellant's application for a grant under the FY 1991 Small Tribes Grant Program. The Deputy Commissioner's decision states:

The Tribe's application did not rank high enough among the 109 tribal applications received to be considered for a grant under the terms of the announcement. The Tribe's application was weak or deficient in these areas:

The purpose of the grant is to continue the support of the staff to carry out normal administrative functions/duties as was done under a Core/Small Tribes grant in Fiscal Year (FY) 1990.

The Tribe listed six of the eight need/problem criteria but there is no supportive documentation that such needs/problems exist.

Work statement/grant goals/objectives do not address needs/problems cited.

Appellant presents arguments concerning all three weaknesses identified by the Deputy Commissioner. With respect to the second and third, appellant submits a substantial amount of new information in its statement of reasons. The new information cannot be considered at this time. In a competitive grant program, the Deputy Commissioner can consider only the information that is included with the original grant application. If the Deputy Commissioner were to consider additional information presented after the time for filing an application, he would violate his duty to give fair and equitable consideration to all grant applications. For the same reason, the Board is precluded from considering the new information. Caddo Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989). The Board finds that appellant has failed to carry its burden of proving error

in the Deputy Commissioner's second and third identified weaknesses. See, e.g., Sauk-Suiattle Indian Tribe v. Portland Area Director, 20 IBIA 238 (1991) and cases cited therein.

Appellant challenges the first weakness identified by the Deputy Commissioner by citing to section A of the Federal Register announcement of the Small Tribes Grant Program. This section provides in part: "The purpose of this grant program is to: (1) Enable small tribes to establish or maintain sound management and administrative practices." (Emphasis added.) 56 FR 3958 (Jan. 31, 1991). In essence, appellant contends that the Deputy Commissioner's statement is in conflict with this section. The Board agrees. In light of the language of section A; and the fact that nothing in the Federal Register announcement indicates that applicants who sought to continue existing programs, rather than initiate new ones, would be penalized; the Board finds that the Deputy Commissioner's first identified weakness is not a valid reason for denial of appellant's application.

The Board is unable to determine from the administrative record whether the second and third weaknesses would have, by themselves, resulted in denial of appellant's application. Therefore, the Deputy Commissioner's decision must be vacated, and this matter remanded to him for a determination as to whether, without consideration of the invalid first reason for denial, appellant's application would have been approved or denied. If he concludes that appellant's application would have been approved, the Deputy Commissioner shall further determine an appropriate remedy if, as the Board assumes, funds for the FY 1991 Small Tribes Grant Program have all been distributed.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Deputy Commissioner's June 26, 1991, decision is vacated, and this matter is remanded to him for further consideration in accordance with this order.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge